

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201904853	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/03/2019 4:50 PM	Location of Incident: Bushwick Avenue and Seigel Street	Precinct: 90	18 Mo. SOL 12/3/2020	EO SOL 7/20/2021	
Date/Time CV Reported Wed, 06/05/2019 11:15 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/05/2019 11:15 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kitwane Lewis	04105	951915	090 PCT
2. POM Volkan Maden	14352	956863	090 PCT
3. POF Toniann Groth	16687	957645	090 PCT
4. An officer			

Officer(s)	Allegation	Investigator Recommendation
A.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis frisked § 87(2)(b)	
B.POM Volkan Maden	Abuse: Police Officer Volkan Maden frisked § 87(2)(b)	
C.POM Volkan Maden	Abuse: Police Officer Volkan Maden searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.SGT Kitwane Lewis	Abuse: Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 05, 2019, § 87(2)(b) filed the following complaint with the CCRB via phone.

At approximately 4:50 p.m. on June 03, 2019, § 87(2)(b) was driving with his son, § 87(2)(b) in the vicinity of Bushwick Avenue and Siegel Street in Brooklyn, when Sergeant Kitwane Lewis, Police Officer Volkan Maden and Police Officer Toniann Groth, stopped his car for tinted windows. After approaching the car, and requesting and obtaining § 87(2)(b)'s driver's license, Sgt. Lewis ordered § 87(2)(b) and § 87(2)(b) out of the car. Sgt. Lewis then frisked § 87(2)(b) and PO Maden frisked § 87(2)(b) (**Allegation A and Allegation B: Abuse of Authority: Frisk:** § 87(2)(g)). PO Maden then entered and searched the interior of the car as well as the trunk (**Allegation C and Allegation D: Abuse of Authority: Vehicle Search:** § 87(2)(g)). § 87(2)(b) and § 87(2)(b) were then ordered back into the car and the officers went back to their car to prepare summonses. While waiting for the officers, § 87(2)(b) took his cell phone out and began taking a video. He was holding his phone out of the car window so that it was facing the police car behind him. While he was doing this, a marked police car drove by, and an officer, who was in the front passenger seat said something along the lines of "I should smack that out of your hand" (**Allegation E: Abuse of Authority: Threat of Force:** § 87(2)(g)). Sgt. Lewis then walked back to § 87(2)(b)'s car and gave him two summonses for tinted windows. § 87(4-b), § 87(2)(g)

The CCRB obtained BWC and prepared detailed summaries from Sgt. Lewis (**Board Review 01 and 02**), PO Maden (**Board Review 03 and 04**), and PO Groth (**Board Review 05 and 06**). § 87(2)(b) provided the investigation with cell phone footage he took during the incident (**Board Review 07**) which was also summarized by the investigation (**Board Review 08**).

Findings and Recommendations

Allegation A: Abuse of Authority: Sergeant Kitwane Lewis frisked § 87(2)(b)

Allegation B: Abuse of Authority: Police Officer Volkan Maden frisked § 87(2)(b)

Allegation C: Abuse of Authority: Volkan Maden searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation D: Abuse of Authority: Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) and § 87(2)(b) provided statements at the CCRB on June 06, 2019 (**Board Review 09 and Board Review 10**). Sgt. Lewis provided a statement at the CCRB on November 21, 2019 (**Board Review 11**), PO Maden provided a statement at the CCRB on December 17, 2019 (**Board Review 12**), and PO Groth provided a statement at the CCRB on January 07, 2020 (**Board Review 13**).

It was undisputed that Sgt. Lewis frisked § 87(2)(b) and that PO Maden frisked § 87(2)(b) and then searched the Santanas' car. It was also undisputed that prior to the frisks and vehicle search, Sgt. Lewis stated to § 87(2)(b) that he smelled marijuana coming from the car.

In their statements, § 87(2)(b) and § 87(2)(b) were consistent in stating that there was no smell of marijuana coming from their car and that there was no marijuana in their car.

Sgt. Lewis stated that when he approached the car, § 87(2)(b) rolled his window down and Sgt. Lewis smelled the odor of fresh marijuana coming from inside the car. PO Maden stated that as

he was standing by the driver's window, he smelled marijuana. He could not recall if the marijuana smelt burnt or fresh. When asked if the smell of marijuana was coming from a specific area, PO Maden stated that the smell was emanating from the car. He did not describe a specific part of the car it seemed to be coming from. PO Groth did not have a recollection of the incident and did not recall if she smelled marijuana.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

The scent of marijuana emanating from a defendant's vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Chestnut, 43 A.D. 2d 260 (**Board Review 14**).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation E: Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

§ 87(2)(b) [REDACTED] stated that after PO Maden searched his car, the three officers went back in their car. He held his phone out of the car window so that it was facing the police car behind him and began taking a video. While he was doing this, a seemingly uninvolved marked police car drove by, and an officer, who was in the front passenger seat said something along the lines of "I should smack that out of your hand." He described this officer as a uniformed black male with a heavy build. § 87(2)(b) [REDACTED]'s statement was consistent with his father's, although he heard the officer say, "I'll slap that phone out of your hand," before laughing. Neither § 87(2)(b) [REDACTED] nor § 87(2)(b) [REDACTED] saw the partner.

Sgt. Lewis, PO Maden, and PO Groth consistently stated that they did not observe any officer threaten to smack § 87(2)(b) [REDACTED]'s phone out of his hand. They consistently stated that they did not recall observing the marked car drive by and when shown § 87(2)(b) [REDACTED]'s cell phone video, they did not recognize the car or the police inside.

At 02:22 of § 87(2)(b) [REDACTED]'s cell phone video (**Board Review 07**) a marked, two seat police car drives by his car and a voice can be heard, "Smack that," before the audio becomes inaudible. The video does not capture the license plate number of the car and neither officer in the car can be seen on video.

The investigation obtained the daily vehicle assignment sheet and roll call for both the 90th Precinct (**Board Review 15**) and PSA 3 (**Board Review 16**). § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**Board Review 18**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 19**).
- Sgt. Lewis has been a member of service for eight years and has been a subject in 12 complaints and 37 allegations of which one was substantiated.
 - CCRB Case 201901804 involved a substantiated allegation of failure to provide RTKA card. The Board recommended command discipline A and the NYPD has yet to impose discipline.
 - § 87(2)(g)
- PO Maden has been a member of service for five years and has been a subject in 10 cases and 30 allegations, of which none have been substantiated.
 - § 87(2)(g)
- PO Groth has been a member of service for five years and this is the first CCRB complaint to which she has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Office, and the results will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 10

Investigator:	<u>Matthew Corwin</u> Signature	<u>Inv. Matthew Corwin</u> Print Title & Name	<u>4/20/2020</u> Date
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Squad Leader:	<u>Eric Rigie</u> Signature	<u>IM Eric Rigie</u> Print Title & Name	<u>4/27/2020</u> Date
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Reviewer:	<u> </u> Signature	<u> </u> Print Title & Name	<u> </u> Date
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